

FEDERAL RESERVE SYSTEM

SunTrust Banks, Inc.
Atlanta, Georgia

SunTrust Bank Holding Company
Orlando, Florida

Order Approving the Merger of Bank Holding Companies

SunTrust Banks, Inc. and SunTrust Bank Holding Company (collectively “SunTrust”), financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”) to merge with National Commerce Financial Corporation (“National Commerce”) and to acquire its subsidiary bank, National Bank of Commerce, both in Memphis, Tennessee (“NBC”).¹ In addition, SunTrust has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y to acquire the nonbanking subsidiaries of National Commerce, including National Commerce’s subsidiary savings associations, NBC Bank, FSB (“NBC FSB”) and First Market Bank, FSB (“First Market FSB”), both in Memphis.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 35,627 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

¹ 12 U.S.C. § 1842.

² 12 U.S.C. §§ 1843(c)(8) and (j); 12 C.F.R. 225.24. All the nonbanking subsidiaries of National Commerce and activities for which SunTrust has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act are listed in Appendix A.

SunTrust, with total consolidated assets of approximately \$128.1 billion, is the tenth largest depository organization in the United States,³ controlling deposits of approximately \$85.8 billion, which represent approximately 1.4 percent of the total amount of deposits of insured depository institutions in the United States.⁴ SunTrust operates subsidiary depository institutions in Alabama, Florida, Georgia, Maryland, South Carolina, Tennessee, Virginia, and Washington, D.C. and engages in numerous nonbanking activities that are permissible under the BHC Act.

National Commerce, with total consolidated assets of approximately \$24 billion, is the 43rd largest depository organization in the United States, controlling deposits of \$17.1 billion. National Commerce operates depository institutions in Arkansas, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

On consummation of the proposal, and after accounting for the proposed divestitures discussed in this order, SunTrust would become the ninth largest depository organization in the United States, with total consolidated assets of approximately \$152.1 billion, and would control deposits of approximately \$103 billion, which represent approximately 1.6 percent of the total amount of deposits of insured depository institutions in the United States.

³ Asset and national ranking data are as of June 30, 2004, and reflect consolidations through August 31, 2004.

⁴ Deposit data are as of June 30, 2004, and reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports for June 30, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of SunTrust is Georgia,⁵ and National Commerce's subsidiary bank is located in Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.⁶

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case. SunTrust currently is adequately capitalized and adequately managed, as defined by applicable law, and would remain so on consummation of this proposal.⁷ National Commerce's subsidiary bank has been in existence and operated continuously for at least the period of time required by applicable state law.⁸ On consummation of the proposal, SunTrust and its affiliates would control less than 30 percent, or the appropriate percentage established by applicable state law, of the total amount of deposits of insured depository institutions in each state in which the subsidiary banks of both

⁵ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁶ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B). Although National Commerce's savings association, NBC FSB, also has offices in Mississippi, it is not a bank subject to section 3(d) of the BHC Act.

⁷ See 12 U.S.C. § 1842(d)(1)(A).

⁸ See 12 U.S.C. § 1842(d)(1)(B).

organizations currently are located.⁹ All other requirements of section 3(d) would be met in this case. Accordingly, based on all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposed bank acquisition that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. In addition, section 3 prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.¹⁰ The Board also must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4 of the BHC Act.

SunTrust competes directly with National Commerce's subsidiary bank and savings associations in 15 banking markets in Georgia, Tennessee, and Virginia.¹¹ The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including public comment on the proposal.¹² In particular, the Board has considered the number of

⁹ See 12 U.S.C. § 1842(d)(2)(A) and (B). See Ga. Code Ann. § 7-1-622.2, S.C. Code Ann. §§ 34-25-50, Tenn. Code Ann. § 45-2-1404, Va. Code Ann. § 6.1-399.

¹⁰ See 12 U.S.C. § 1842(c)(1).

¹¹ These banking markets are described in Appendix B and include the markets in which First Market FSB competes directly with SunTrust Bank.

¹² One commenter expressed general, unspecified concerns about the competitive effects of this proposal. Another commenter, National Commerce's joint-venture partner in First Market FSB, expressed concern that the proposed transaction would hamper First Market FSB's ability to compete with SunTrust in the three

competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by SunTrust and National Commerce,¹³ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁴ other

banking markets in which they directly compete: the Richmond, Newport News-Hampton, and Fredericksburg banking markets in Virginia. First Market FSB is a joint venture between National Commerce, which owns 49 percent of the thrift’s voting securities, and Ukrop’s Super Markets, Inc., which owns 51 percent. The Board has reviewed the competitive effects in these three banking markets, taking into account that under well-established principles of banking law, First Market FSB is a subsidiary of National Commerce and would become a subsidiary of SunTrust on consummation of the proposal.

¹³ Deposit and market share data are based on annual branch reports as of June 30, 2003, adjusted to reflect mergers and acquisitions through June 17, 2004, and on calculations in which the deposits of thrift institutions are included at 50 percent, except as noted below. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 Federal Reserve Bulletin 386 (1989); *National City Corporation*, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 Federal Reserve Bulletin 52 (1991). The deposits of First Market FSB and NBC FSB are weighted at 100 percent because the thrifts are owned by a commercial banking organization. *See, e.g., Norwest Corporation*, 78 Federal Reserve Bulletin 452 (1992).

¹⁴ Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects

characteristics of the markets, and commitments made by SunTrust to divest certain branches.

A. Banking Markets without Divestitures

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in 14 of the banking markets where SunTrust and National Commerce's subsidiary bank and savings associations compete directly.¹⁵ One banking market would remain unconcentrated¹⁶ and thirteen banking markets would remain moderately concentrated, as measured by the HHI, with only modest increases in concentration in each market.¹⁷ Numerous competitors would remain in all 14 banking markets.

B. Banking Market with Divestiture

In the Lawrence County, Tennessee, banking market ("Lawrence County Market"), SunTrust is the third largest depository organization, controlling deposits of \$104 million, which represent 22.1 percent of market deposits. National Commerce is the fourth largest depository organization in the market, with three branches that control deposits of \$62.9 million, which represent 13.3 percent of market deposits. To reduce the potential for adverse effects on

implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹⁵ The effects of the proposal on the concentration of banking resources in these banking markets are described in Appendix C.

¹⁶ The Morristown-Newport, Tennessee, banking market would remain unconcentrated.

¹⁷ The moderately concentrated markets are the Atlanta, Dalton, Rome, and Savannah banking markets, all in Georgia; the Chattanooga, Cleveland, Knoxville, and Nashville banking markets, all in Tennessee; and the Fredericksburg, Newport News-Hampton, Pulaski-Radford, Richmond, and Roanoke banking markets, all in Virginia.

competition in the Lawrence County Market, SunTrust has committed to divest to an out-of-market banking organization all three National Commerce branches.¹⁸

After accounting for the proposed divestitures, consummation of the merger would be consistent with the DOJ Guidelines and Board precedent. Although the Lawrence County Market would remain highly concentrated, market concentration would not be increased by this proposal, and the HHI would remain at 2062. Five competitors would remain in the market, including two institutions that each would have a market share greater than SunTrust's market share on consummation of the proposal.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The Department of Justice also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that, in light of the proposed divestitures, consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 15 banking markets

¹⁸ SunTrust has committed that it will execute, before consummation of the proposed merger, a sales agreement with an out-of-market banking organization. SunTrust also has committed that, if it is unsuccessful in completing the proposed divestiture with a purchaser determined by the Board to be competitively suitable within 180 days of consummation of the National Commerce proposal, SunTrust will transfer the unsold branches to an independent trustee and will instruct the trustee to sell such branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable by the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

where SunTrust and National Commerce compete directly or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of SunTrust and National Commerce, their subsidiaries, and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information from the primary federal supervisors for the subsidiary depository institutions of SunTrust and National Commerce, publicly reported and other financial information, comments received on the proposal, and information provided by SunTrust. In addition, the Board has consulted with the Office of the Comptroller of the Currency (“OCC”) and the Office of Thrift Supervision (“OTS”), the primary federal supervisors of NBC and National Commerce’s subsidiary savings associations, respectively, on the proposal.¹⁹

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. SunTrust, National Commerce, and their subsidiary depository institutions currently are well capitalized and would remain so on consummation of the proposal.²⁰ The proposed transaction is structured primarily

¹⁹ SunTrust’s lead subsidiary bank, SunTrust Bank, Atlanta, is a state member bank supervised by the Federal Reserve System.

²⁰ A commenter alleged that the compensation for National Commerce’s senior management under severance agreements is excessive. The Board notes that the severance agreements have been disclosed to shareholders and that SunTrust would remain well capitalized on consummation.

as a share exchange, but National Commerce's shareholders may elect to receive cash instead of SunTrust shares. The cash portion of the compensation would be funded by SunTrust through the issuance of senior notes and from other available resources. The Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of SunTrust, National Commerce, and the banking and nonbanking subsidiaries to be acquired and the effect of the proposal on these resources. The Board has reviewed available assessments of management and evaluations of risk-management systems by relevant supervisors. In addition, the Board has considered SunTrust's plans for implementing the proposal, including its proposed management after consummation, and the company's record of successfully integrating acquired institutions into its existing operations.²¹

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of SunTrust and the depository institutions involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

²¹ Some commenters criticized National Commerce's record of diversity among its suppliers and asserted that the Board should encourage SunTrust to commit to implement a supplier-diversity program and to provide representation by Florida residents in its management (including its board of directors) that is commensurate with SunTrust's percentage of total deposits in the state. Commenters also contended that the Board should encourage SunTrust to report publicly the level of minority employees in its middle management. Although the Board fully supports programs designed to promote equal economic opportunities for all members of society, the comments about diversity among suppliers and employment are beyond the factors the Board is authorized to consider under the BHC Act. See, e.g., Deutsche Bank AG, 85 Federal Reserve Bulletin 509, 513 (1999). The Board also notes that federal banking laws do not impose residency requirements on the management of bank holding companies. As described above, the Board has carefully considered the competence and experience of SunTrust's management in its review of the proposal.

Convenience and Needs and CRA Performance Consideration

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).²² The Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire an insured savings association.²³ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating depository institutions’ expansionary proposals.²⁴ The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of SunTrust and National Commerce in light of all the facts of record, including public comments received on the proposal.

A. Summary of Public Comments on Convenience and Needs

In response to the Board’s request for public comment on this proposal, 48 commenters submitted their views.²⁵ Twenty-nine commenters

²² 12 U.S.C. § 2901 et seq.

²³ See, e.g., North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767 (2000).

²⁴ 12 U.S.C. § 2903.

²⁵ Included in this total is one comment that was submitted by 32 community groups.

commended SunTrust for the financial and technical support provided to their community development organizations or related their favorable experiences with specific programs or services offered by SunTrust. Many of these commenters also expressed their support for the proposal.

Nineteen commenters opposed the proposal and collectively expressed concern about the CRA performance and fair lending records of SunTrust or National Commerce. Many commenters alleged that SunTrust provided a low level of home mortgage lending to LMI borrowers or in LMI communities and should provide more small business lending and community development lending and investment in various communities. In addition, many commenters asserted that National Commerce should engage in more community development and reinvestment activity in underserved communities. Several commenters also criticized National Commerce's record of small business lending, including lending to businesses owned by minorities. Some commenters contended, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),²⁶ that SunTrust and National Commerce underserved minority borrowers and communities and engaged in disparate treatment of minority individuals in their home mortgage lending operations in certain markets.²⁷

²⁶ 12 U.S.C. § 2801 et seq.

²⁷ Some commenters criticized SunTrust's relationships with unaffiliated payday lenders, car-title lending companies, and other nontraditional providers of financial services. SunTrust noted that SunTrust Bank and National Commerce lend to a small number of such companies that are engaged in lawful businesses governed by state law and regulated and licensed by the states. SunTrust, however, stated that it was voluntarily revising its credit policies to prohibit future loans to any business that engages in payday or car-title lending and that this policy would apply to National Commerce businesses after the merger. Furthermore, SunTrust stated that it does not make subprime loans, either directly or through subsidiaries. Under SunTrust's alternative lending programs in its consumer lending and mortgage lending units, applications that have been determined not to meet SunTrust's own criteria might be referred to unaffiliated lenders. Those lenders

Several commenters expressed concerns about possible branch closures and reductions in services resulting from the proposed merger.

B. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions of both organizations. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²⁸

SunTrust Bank received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta, as of October 21, 2002 ("2002 Evaluation"). National Commerce's lead bank, NBC, also received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2001 ("NBC 2001 Evaluation").²⁹ In addition, the OTS rated both First Market Bank FSB and NBC Bank FSB "satisfactory" at their most recent CRA performance evaluations, as of October 30, 2003, and February 4, 2003, respectively. SunTrust has represented that it would implement its program for managing community reinvestment activities at

may offer subprime loans and underwrite the loans under their own criteria. SunTrust affirmed that the alternative credit programs represent a small fraction of SunTrust's overall lending business.

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

²⁹ In addition, SunTrust's other subsidiary bank, SunTrust BankCard, National Association, Atlanta ("SunTrust BankCard"), received a "satisfactory" rating from the OCC, as of October 16, 2002.

National Commerce's subsidiary depository institutions on consummation of the proposal.

C. CRA Performance of SunTrust

Overview. As noted above, SunTrust Bank received an overall "outstanding" rating for CRA performance in the 2002 Evaluation.³⁰ Examiners reported that SunTrust Bank exhibited a good level of responsiveness to the credit and community development needs of its overall assessment areas, and they commended the bank for an excellent record of serving the credit needs of low-income individuals and communities.

SunTrust Bank received an overall "high satisfactory" rating under the lending test. Examiners found that SunTrust Bank originated or purchased more than 198,300 HMDA-reportable loans totaling approximately \$24.5 billion within its assessment areas during the evaluation period. They noted that SunTrust made more than 28 percent of its HMDA-reportable home purchase loans to LMI borrowers. In addition, examiners commended SunTrust Bank for its use of flexible lending products. During the evaluation period, SunTrust Bank made more than 32,700 loans totaling approximately \$3.5 billion through these products. In its Georgia assessment area, examiners particularly commended the bank for its good distribution of loans to individuals of different income levels and to businesses of different annual revenue levels.

Since the 2002 Evaluation, SunTrust has maintained a high level of home mortgage lending. In 2003, SunTrust Bank and SunTrust Mortgage made HMDA-reportable loans totaling approximately \$16 billion. SunTrust continued

³⁰ The evaluation period was July 1, 2000, through June 30, 2002. At the time of the 2002 evaluation, SunTrust had 74 assessment areas in six states (Alabama, Florida, Georgia, Maryland, Tennessee, and Virginia) and Washington, D.C., including 13 that received a full-scope review. The review also included home mortgage lending data from SunTrust Bank's mortgage subsidiary, SunTrust Mortgage, Inc., Richmond, Virginia ("SunTrust Mortgage").

to make more than 28 percent of its home purchase loans to LMI borrowers, for a total of \$2.6 billion in 2003. SunTrust stated that the percentage of SunTrust Bank's HMDA-reportable loans to borrowers in LMI census tracts in its assessment areas totaled approximately \$1.3 billion in 2003.

In the 2002 Evaluation, examiners also found that the bank exhibited a good record of lending to small businesses.³¹ SunTrust Bank originated approximately 83,110 small loans to businesses totaling \$9.2 billion within its assessment areas.³² Examiners commended the bank for originating approximately 60 percent of its total number of small loans to businesses to small businesses. They also favorably noted that more than 49 percent of the bank's small loans to businesses in the Atlanta assessment area were to small businesses.³³

SunTrust has remained an active small business lender since the 2002 Evaluation. SunTrust reported that its loans to small businesses had increased to more than 64 percent of its total small loans to businesses by the end of the first quarter of 2004. Based on small business data reported by SunTrust in 2002 and 2003 in its assessment areas in Florida, Georgia, and North Carolina, SunTrust's small business lending compared favorably with the performance by

³¹ Small businesses are businesses with gross annual revenues of \$1 million or less.

³² Small loans to businesses include loans with original amounts of \$1 million or less that are either secured by nonfarm, nonresidential properties or classified as commercial and industrial loans.

³³ Examiners noted that SunTrust Bank's level of lending to small businesses exceeded the performance by the aggregate of lenders ("aggregate lenders") in the bank's Atlanta assessment area in 2001. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular market.

the aggregate lenders in these markets.³⁴ In 2003, the percentages of SunTrust's small loans to businesses in Florida, Georgia, and North Carolina that were to small businesses substantially exceeded the percentages for the aggregate lenders. Although SunTrust's percentage of small loans to businesses in predominantly minority census tracts³⁵ in 2003 somewhat lagged the percentage for the aggregate lenders in Florida, its percentage matched the percentage for the aggregate lenders in North Carolina and exceeded that percentage in Georgia. In 2003, the percentage of SunTrust's total number of small loans to businesses in Florida, Georgia, and North Carolina that were in LMI census tracts was comparable with or exceeded the percentage for the aggregate lenders.

In the 2002 Evaluation, examiners reported that SunTrust Bank made a relatively high level of community development loans, totaling \$1.2 billion during the evaluation period. They particularly commended the bank for being a leader in making community development loans in its Nashville, Tennessee, assessment area, where the bank's community development loans totaled more than \$52 million. Examiners also noted that Fannie Mae recognized the bank for its innovative lending involvement with two major redevelopment projects in the Atlanta assessment area that provided more than 1,000 mixed-income housing units.

SunTrust has continued a high level of community development lending since the 2002 Evaluation. It represented that SunTrust Bank made community development loan commitments totaling more than \$751 million in 2003 and the first quarter of 2004. In 2003, SunTrust Bank's community

³⁴ The 2002 and 2003 SunTrust small business data include data reported by SunTrust Bank and SunTrust BankCard.

³⁵ In this context, "predominantly minority census tracts" means census tracts with a minority population of 80 percent or more.

development loans totaled more than \$270 million in Florida and more than \$145 million in Georgia. These loans included a community development loan of \$3 million to finance a project to build 116 single-family, affordable housing units in Miami, Florida.

SunTrust Bank received an “outstanding” rating under the investment test in the 2002 Evaluation. Examiners determined that the bank had an excellent level of qualified community development investments and grants. The bank’s portfolio of qualified community development investments totaled approximately \$620 million, as of June 30, 2002. The new qualified investments during the evaluation period totaled more than \$161 million in Georgia, \$118 million in Virginia, and \$83 million in Washington, D.C. In addition, examiners favorably noted that the bank often acted as a leading investor in or grantor to various community development initiatives that did not routinely receive private funding. Examiners also reported that SunTrust Bank provided \$6.5 million in charitable contributions during its evaluation period.³⁶

SunTrust represented that it made more than \$190 million in new community development investments in 2003 and the first quarter of 2004. Most of these investments were made through SunTrust Community Development Corporation and financed affordable housing projects across SunTrust Bank’s assessment areas, such as \$15 million in qualified community development investments in an apartment development for LMI residents in Atlanta. As of

³⁶ Some commenters requested that SunTrust increase its philanthropic activities in general. Commenters also suggested that the Board should encourage or require SunTrust to become the regional leader for lending to and investing in underserved individuals, communities, and small businesses, particularly in North Carolina and Florida. The Board notes that neither the CRA nor the agencies’ implementing rules require that financial institutions engage in any type of philanthropy or be the regional leader for any type of activity.

March 31, 2004, SunTrust Bank's portfolio of qualified community development investments had increased to more than \$850 million.

SunTrust Bank also received an "outstanding" rating under the service test in the 2002 Evaluation. Examiners reported that the bank's delivery systems, including its branches and ATMs, were readily accessible to all portions of the assessment areas. They found that the bank provided a relatively high level of community development services and that these services were highly responsive to affordable housing needs. In addition, examiners noted that the bank's personnel used their expertise to provide financial services that benefited residents in the bank's assessment areas. Since the 2002 Evaluation, SunTrust reported that it has continued to provide many community services, especially through its employees' service as board members, fundraisers, advisors, and volunteers for numerous community-based organizations.

Florida. SunTrust Bank received an overall "outstanding" rating for its CRA performance in Florida³⁷ and a "high satisfactory" under the lending test.³⁸ Examiners reported that SunTrust achieved a good distribution of loans to borrowers of different income levels and to businesses of different annual revenue levels. Examiners found that approximately 24 percent of the bank's HMDA-reportable home purchase loans were to LMI individuals. In addition, examiners reported that almost 60 percent of the bank's small loans to businesses in the state were to small businesses.

³⁷ Approximately 10 percent of SunTrust Bank's total bank deposits were in Florida during the evaluation period. In evaluating SunTrust Bank's Florida assessment areas, examiners conducted full-scope reviews in the bank's assessment areas in Miami and Orlando and limited-scope reviews in the bank's other Florida assessment areas.

³⁸ Some commenters expressed concern about SunTrust's CRA performance in Florida.

Since the 2002 Evaluation, SunTrust has originated more than 8,100, or 21 percent, of its total number of HMDA-reportable loans in Florida to LMI individuals and more than 12,900, or 65 percent, of its small loans to businesses in Florida to small businesses.

Examiners reported a high level of community development lending by SunTrust Bank in the Miami and Orlando assessment areas. They specifically commended the Bank for being a leader in the Miami assessment area by originating almost \$178 million in community development loans. Since the 2002 Evaluation, SunTrust has made more than \$300 million in community development loans in Florida, including a \$7 million loan to a project in Ft. Lauderdale, which provided more than 100 new affordable housing units in a moderate-income census tract.

Examiners rated SunTrust Bank's performance as "outstanding" under the investment test in its Florida assessment areas, noting that the bank made community development investments of more than \$91 million in the state during the evaluation period. They found that SunTrust Bank exhibited excellent responsiveness to credit and community development needs through its investment activities. In 2003, SunTrust Bank's community development investments in Florida totaled more than \$30 million.

Examiners rated SunTrust Bank's performance as "outstanding" under the service test in its Florida assessment areas. Examiners also commended the bank's level of service to its communities in Florida, reporting that its delivery systems, including ATMs and branch offices, were considered readily accessible to essentially all portions of the Florida assessment areas. Examiners commended the bank's leadership in providing a high level of community development services that benefited Florida residents.

D. CRA Performance of National Commerce

1. NBC. As noted above, NBC received an “outstanding” rating for its overall CRA performance from the OCC in the NBC 2001 Evaluation.³⁹ Examiners also rated NBC as “outstanding” under the lending test.⁴⁰ During the evaluation period, NBC originated more than 10,600 HMDA-reportable loans totaling approximately \$977 million. Examiners noted favorably that the borrower distribution of housing, small business, and small farm loans was excellent or good in assessment areas that represented more than 99 percent of the bank’s deposits. In particular, examiners commended NBC’s lending performance in the Knoxville and Nashville Metropolitan Statistical Areas (“MSAs”). Approximately 36 percent of the bank’s HMDA-reportable loans in the Knoxville MSA, and more than 42 percent of those loans in the Nashville MSA, were to LMI borrowers.

Since the NBC 2001 Evaluation, National Commerce reported that in 2002, more than 24 percent of NBC’s HMDA-reportable loans in its assessment areas were to LMI borrowers. In 2003, that amount increased to approximately 28 percent. More than 10 percent of the bank’s total HMDA-reportable loans were

³⁹ At the time of the 2001 performance evaluation, NBC had ten assessment areas in five states (Arkansas, Georgia, Tennessee, Virginia, and West Virginia), including seven that received a full-scope review. The evaluation period was January 1, 2000, to December 31, 2001.

⁴⁰ A commenter criticized National Commerce’s lending record in North Carolina. NBC merged with Central Carolina Bank and Trust Company, Durham, North Carolina (“Central Carolina Bank”), in 2000, thereby expanding its operations into North and South Carolina for the first time. See National Commerce Bancorporation, 86 Federal Reserve Bulletin 597 (2000). Examiners did not include the acquired locations in these states in the NBC 2001 Evaluation. The Board notes, however, that before the merger, the FDIC rated Central Carolina Bank as “satisfactory” at its most recent CRA exam, as of January 24, 2000.

originated to borrowers in LMI census tracts in 2002, and by the first quarter of 2004 the percentage had increased to more than 12 percent.⁴¹

NBC originated approximately 2,300 small loans to businesses during the evaluation period. The examiners particularly commended NBC for its distribution of loans to small businesses in Georgia and Virginia. They also favorably noted NBC's distribution of small loans to business among businesses of different annual revenue levels in Georgia and Tennessee. In the Nashville MSA,

⁴¹ In connection with NBC's acquisition of Central Carolina Bank in 2000, Central Carolina Bank entered into an agreement with North Carolina-based community organizations to improve its lending to LMI and minority households and neighborhoods. Commenters alleged that National Commerce failed to meet the terms of the agreement. Some commenters also expressed interest in SunTrust entering into a new agreement or setting new CRA-related objectives. SunTrust asserted that NBC met the letter and spirit of this agreement by increasing the proportions of its residential, small business, and community development loans to LMI and minority borrowers and in LMI and predominantly minority neighborhoods in North Carolina. SunTrust also represented that NBC's community development lending in North Carolina increased from \$5 million in 1999 to more than \$20 million in 2002 and that the bank originated \$49 million in community development loans from 2002 through June 2004. Moreover, NBC has made 54 percent of its total community development loans and 68 percent of its total community development investments in North Carolina since the NBC 2001 Evaluation. SunTrust also represented that it plans to designate community reinvestment managers in various North Carolina communities to serve as the bank's primary points of contact for community groups, local government agencies, and other parties.

The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with community organizations. Moreover, the Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA. See, e.g., J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin ____ (Order dated June 14, 2004); Bank of America Corporation, 90 Federal Reserve Bulletin 217 (2004). The Board further notes that the CRA does not authorize the Board to direct SunTrust's CRA-related activities towards specific groups, individuals, or projects.

examiners noted that 75 percent of its small loans to business were to small businesses during the evaluation period.

Since the NBC 2001 Evaluation, National Commerce reported that the percentage of the bank's small loans to businesses that were made to businesses in LMI census tracts increased from more than 16 percent in 2002 to approximately 23 percent in 2003. In addition, the bank's business loans with originated amounts of \$100,000 or less represented approximately 78 percent of its total small loans to businesses in the first quarter of 2004.

In the NBC 2001 Evaluation, examiners commended NBC's community development lending and noted favorably that NBC originated community development loans in greater amounts than projected. They reported that the bank's \$8 million in community development loans in Tennessee reflected an excellent level of responsiveness to the community's needs.⁴² Examiners also characterized as excellent NBC's level of community development lending in Georgia, where the bank originated \$2.4 million of these loans. Since the NBC 2001 Evaluation, the bank made almost \$77 million in community development loan commitments during 2002 and 2003.

NBC also received an "outstanding" rating under the investment test. According to examiners, NBC's investment activity reflected an excellent level of responsiveness to its assessment areas. NBC made community development investments totaling more than \$11.5 million during the evaluation period. Examiners commended specific qualified investments of NBC that significantly benefited its assessment areas, such as the financial support provided to the Senior Housing Crime Prevention Foundation that serves LMI senior citizens in Tennessee. In addition, examiners noted that NBC made qualified investments

⁴² Approximately 20 percent of NBC's total bank deposits were in Tennessee during the evaluation period.

totaling \$1.4 million in the Knoxville MSA and \$3.5 million in the Nashville MSA during the evaluation period.

In 2002 and 2003, NBC's community development investments totaled approximately \$42 million, which primarily funded various affordable housing initiatives. As of March 31, 2004, NBC's portfolio of qualified community development investments totaled \$63 million.

The bank received a "high satisfactory" rating under the service test in the NBC 2001 Evaluation. Examiners concluded that NBC provided an excellent level of community development services. They found that the accessibility of the bank's retail service systems was generally good and that its hours and services were typically tailored to the convenience and needs of the bank's communities.⁴³

⁴³ One commenter expressed concern about National Commerce's branching arrangements with Wal-Mart, under which National Commerce provides banking services through its branches in certain Wal-Mart retail stores. NBC currently operates 25 in-store branches in Georgia and Tennessee and plans to open 70 additional in-store branches in Georgia and Florida, for a total of 95 branches in Wal-Mart stores. SunTrust stated that NBC runs the operations of each branch, but that the two parties jointly market the program under the trade name, "Wal-Mart Money Center, by National Bank of Commerce." The branches provide traditional banking services to customers and are subject to examination by the appropriate federal banking agency in the same manner as any bank branch. The Board notes that the OCC concluded that NBC's operation of branches under this trade name was consistent with the Interagency Statement on Branch Names. See Comptroller of the Currency, Interpretive Letter #977, December 2003. See also, Board of Governors of the Federal Reserve System, Supervision and Regulation Letter 98-14, June 3, 1998.

In addition, the commenter noted general concerns about Wal-Mart's treatment of its employees. Employees of the NBC branches at Wal-Mart locations are bank employees, not Wal-Mart employees. Moreover, such concerns involving employment practices are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). The commenter also criticized Wal-Mart's attempts to enter the banking system. The Board notes that Wal-Mart does not control any insured depository institution and, consequently, is not deemed to be a bank holding company. In

In addition, examiners noted that NBC's record of opening and closing branches did not adversely affect the accessibility of delivery systems, particularly in LMI census tracts. Examiners also commended NBC for its service to a number of organizations pursuing affordable housing, small business development, and community service initiatives targeted at LMI areas and individuals.

2. First Market FSB. As noted above, First Market FSB received a "satisfactory" CRA rating from the OTS at its most recent CRA performance evaluation, as of October 30, 2003. Under the lending test, First Market FSB received a "high satisfactory" rating. Examiners noted that the institution's record of mortgage lending to LMI borrowers was good and its geographic distribution of loans was reasonable. Examiners reported that First Market FSB enhanced its lending performance through the use of programs and products designed for LMI borrowers. These programs included First Market FSB's CRA Home Improvement Loan Program, an alternative to higher-cost personal loans, and its Affordable Mortgage Product, which requires a nominal down payment of \$500, allows loan-to-value ratios up to 100 percent, and uses flexible underwriting guidelines. Examiners also noted that First Market FSB originated a significant number of business loans and community development loans.⁴⁴

Examiners rated First Market FSB's performance under the investment test as "outstanding." Examiners reported that the institution's level of qualified investments was excellent. These investments included a targeted

addition, National Commerce's branching agreement with Wal-Mart does not cause the store to control a depository institution and, therefore, does not make Wal-Mart subject to the BHC Act.

⁴⁴ During the review period, First Market FSB originated 387 business loans totaling \$48 million, including \$27 million in loans to small businesses, and 6 community development loans totaling \$2 million.

mortgage-backed security, a housing development bond, participation in a loan consortium, and financial donations.

Under the service test, First Market FSB received a “high satisfactory” rating. Examiners reported that the institution’s delivery system was accessible to essentially all portions of its assessment area.

3. NBC FSB. As noted above, NBC FSB received an overall “satisfactory” CRA performance rating from the OTS at its most recent performance evaluation, as of February 4, 2003. The institution received a “high satisfactory” rating under the lending test and a “low satisfactory” rating under the investment test. Examiners noted that NBC FSB’s lending levels reflected a good responsiveness to the community’s credit needs and its lending to borrowers of different income levels was excellent. Examiners also favorably noted NBC FSB’s use of two special loan programs for LMI borrowers through which it originated 25 loans totaling almost \$800,000. They noted that NBC FSB’s performance under the investment test was mitigated by its lending performance and limited investment authority.

Under the service test, NBC FSB received a “high satisfactory” rating. Examiners noted that NBC FSB’s delivery system was readily accessible to essentially all portions of the assessment area through its two full-service, in-store supermarket branches and that the institution’s extended business hours were tailored to meet the convenience and needs of the areas served.

E. HMDA Data and Fair Lending Record

The Board also has carefully considered the lending records of SunTrust and National Commerce in light of comments received on the HMDA

data for 2001 and 2002 reported by the organizations' subsidiary banks and their lending subsidiaries.⁴⁵ Some commenters alleged that SunTrust and National Commerce disproportionately excluded or denied applications for HMDA-reportable loans by minorities.⁴⁶

The HMDA data for 2002 and 2003 indicate that the percentages of total HMDA-reportable loans originated by SunTrust Bank⁴⁷ to African Americans and Hispanics generally lagged the performance of the aggregate lenders in the

⁴⁵ Some commenters alleged that SunTrust Mortgage had prescreened applicants and inappropriately directed African-American applicants to SunTrust Bank. To support this claim, commenters asserted that SunTrust Bank reported significantly higher denial rates than SunTrust Mortgage. SunTrust represented that SunTrust Mortgage and SunTrust Bank do not offer different residential mortgage products to which customers could be directed and that applications are processed through the same lending channel, regardless of which SunTrust affiliate received the applications. SunTrust further asserted that SunTrust Bank performed origination services on behalf of SunTrust Mortgage in certain markets in 2002.

⁴⁶ In addition, some commenters expressed concerns that NBC's tiered-pricing program for mortgage loans has resulted in a disparate impact on African-American borrowers and, thus, violated fair lending laws. Under the tiered-pricing system, the bank charges a higher interest rate for loans of \$75,000 or less. Commenters asserted that through this program, NBC engaged in a pattern and practice that had an adverse and disparate impact on African Americans, who disproportionately apply for mortgage loans in amounts of less than \$75,000. SunTrust responded that NBC's pricing structure was not discriminatory and that the bank's pricing based on loan amount was applied neutrally and without regard to any prohibited factor. SunTrust stated that it does not have a tiered-pricing practice and that on consummation of the proposal, mortgage loans originated by all its subsidiaries, including NBC, would be priced in accordance with SunTrust policies and practices. The commenters' fair lending allegations have been forwarded to the OCC, the primary federal supervisor of NBC and the agency responsible for enforcing fair lending laws at the bank.

⁴⁷ For purposes of this review, SunTrust Bank's HMDA data include data reported by SunTrust Mortgage.

markets reviewed.⁴⁸ In addition, SunTrust Bank's denial disparity ratios⁴⁹ for African-American and Hispanic applicants in 2002 and 2003 were generally higher than the ratios for the aggregate lenders in the markets reviewed.

The HMDA data indicate, however, that the percentages of SunTrust Bank's total HMDA-reportable loans to African Americans and Hispanics increased modestly from 2002 to 2003 in most of the markets reviewed. Moreover, the bank's denial disparity ratios for African-American and Hispanic applicants decreased from 2002 to 2003 in most of the markets reviewed.⁵⁰

⁴⁸ The Board analyzed HMDA data for 2002 and 2003 reported by SunTrust Bank in MSAs and statewide in Alabama, Florida, Georgia, Maryland, Tennessee, Virginia, and Washington, D.C. The statewide data include the relevant data from the MSAs in SunTrust Bank's assessment areas in a particular state or Washington, D.C. SunTrust Bank's percentages of HMDA-reportable loan originations to African Americans in 2003 were comparable with the percentages for the aggregate lenders in Alabama, Georgia, Maryland, Virginia, and Washington, D.C., but lagged the percentages for the aggregate in Florida and Tennessee. SunTrust Bank's percentages of HMDA-reportable loans to Hispanic applicants lagged the percentages for the aggregate lenders in Georgia, Florida, and Virginia, but were comparable with or exceeded the aggregate lenders in Alabama, Tennessee, and Washington, D.C. SunTrust Bank's percentages of HMDA-reportable loans to borrowers in minority census tracts exceeded or were comparable with the performance of aggregate lenders in Maryland, Virginia, Tennessee, and Washington, D.C., but lagged in Alabama, Georgia, and Florida.

⁴⁹ The denial disparity ratio equals the denial rate for a particular racial category (for example, African American) divided by the denial rate for whites.

⁵⁰ In August 2003, SunTrust purchased and assumed most of the assets and liabilities of Sun America Mortgage, Inc., Richmond, Virginia ("Sun America Mortgage"), which were transferred to SunTrust Mortgage. Some commenters asserted, based on data from Sun America Mortgage, that SunTrust disproportionately denied or excluded African-American and Hispanic applicants. In addition, one commenter submitted a complaint that SunTrust had not provided him Sun America Mortgage's HMDA data as he requested. The Sun America Mortgage HMDA data cited by these commenters covered a period before SunTrust Bank acquired any assets or liabilities from Sun America Mortgage and are not part of SunTrust Bank's HMDA data records.

SunTrust Bank increased the number of loans to African-American and Hispanic individuals and to borrowers in predominantly minority census tracts in all but one of the markets reviewed during this time period.

The HMDA data for 2003 indicate that the percentages of National Commerce's total HMDA-reportable loans that were originated to African-American borrowers lagged the percentages for the aggregate lenders in most of the markets reviewed, but exceeded the percentages for the aggregate lenders in West Virginia and Arkansas.⁵¹ However, National Commerce's percentages of HMDA-reportable loan originations to Hispanic borrowers in 2003 exceeded or were comparable with the percentages for the aggregate lenders in all but one of the states reviewed. In addition, National Commerce's denial disparity ratios in 2003 were lower than or comparable with the ratios for the aggregate lenders in the majority of the markets reviewed.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups and persons at different income levels in certain local areas, the HMDA data generally do not indicate that SunTrust or National Commerce excluded any race or income segment of the population or geographic areas on a prohibited basis. The Board nevertheless is concerned when the record of an institution indicates disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories

⁵¹ The Board analyzed HMDA data for 2002 and 2003 reported by NBC, NBC FSB, and First Market FSB in MSAs in Arkansas, Georgia, North Carolina, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia and the institutions' statewide data in these states.

of housing-related lending and provide only limited information about covered loans.⁵² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository and lending institutions of SunTrust and National Commerce. Examiners noted no substantive fair lending issues or concerns in the consumer compliance examinations of the depository institutions controlled by SunTrust or National Commerce.

The record also indicates that SunTrust and National Commerce have taken various measures to help ensure compliance with fair lending laws. National Commerce has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. In addition, National Commerce has a Compliance Department with 12 full-time professionals and each mortgage division has a full-time compliance officer.

SunTrust Bank has taken various steps to increase its mortgage lending to minorities. To market its mortgage loan products more effectively to minorities, SunTrust entered into a one-year agreement in 2001 with Fannie Mae, called the Multicultural Homeownership Initiative, under which SunTrust agreed to provide up to \$1 billion in Fannie Mae mortgage loans to homebuyers who are

⁵² The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

immigrants or minorities (“multicultural homebuyers”). SunTrust represented that it met this goal before the agreement expired and entered into a new two-year agreement with Fannie Mae in June 2002 to originate \$2.5 billion in loans to underserved borrowers, primarily multicultural homebuyers. SunTrust further represented that it met that goal in June 2004 and that it is currently negotiating with Fannie Mae to extend the commitment. In addition, SunTrust stated that from 2001 to 2004, it offered educational and training programs on multicultural homeownership opportunities to realtors and loan officers throughout its assessment areas. SunTrust represented that these initiatives have resulted in the improvement noted above in its overall lending to minorities in 2003.

SunTrust’s compliance programs include the implementation of fair lending policies and procedures, self-assessments and transactional testing, complaint-monitoring processes, and employee training. SunTrust Bank and SunTrust Mortgage operate a consolidated consumer compliance function that is under the direction of SunTrust’s Corporate Compliance Manager. This compliance function is divided into five units focused on mortgage loans, consumer loans, commercial loans, deposit products, and fair lending compliance. SunTrust stated that it expects to implement its compliance structure, policies, and processes throughout the resulting organization.

The Board also has considered the HMDA data in light of other information, including the CRA performance records of the subsidiary depository institutions of SunTrust and National Commerce. These records demonstrate that SunTrust and National Commerce are active in helping to meet the credit needs of their entire communities.

F. Branch Closings

Some commenters expressed concerns that the proposal would result in possible branch closings. The Board has carefully considered these comments in light of all the facts of record. SunTrust represented that as a result of the

merger, branches might be closed in those markets where branches of SunTrust Bank overlap with those of NBC, but that it has not made any decisions about specific branches to be closed, relocated, or consolidated.⁵³ SunTrust indicated that branch closings would be made in accordance with SunTrust's branch closing policy, which requires, among other factors, consideration of the proposal's effects on LMI communities. In the 2002 Evaluation, examiners reported that the bank's record of closing branches did not adversely affect accessibility to its services, particularly with respect to LMI areas and individuals. Examiners also reviewed SunTrust's corporate branch closing policy and determined that it met all regulatory requirements. In addition, examiners found that NBC's record of opening and closing branches did not adversely affect the accessibility of its delivery systems for banking services, particularly in LMI geographies.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.⁵⁴ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Board, the OTS, and the OCC, as the appropriate federal supervisors of SunTrust Bank and National Commerce's subsidiary depository

⁵³ One commenter expressed concern that SunTrust may target rural branches in North Carolina for closure. SunTrust currently has no branches in North Carolina and has indicated that this acquisition is motivated in part by its intent to expand into new markets.

⁵⁴ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

institutions, will continue to review each depository institution's branch closing record in the course of conducting CRA performance evaluations.

G. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by SunTrust and National Commerce, comments on the proposal, confidential supervisory information, and SunTrust's plans to implement its CRA-related policies, procedures, and programs at NBC, First Market FSB, and NBC FSB.⁵⁵ The Board notes that the proposal would expand the availability and array of banking products and services to the customers of SunTrust and National Commerce, including access to expanded branch and ATM networks and internet banking services. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Nonbanking Activities

As noted above, SunTrust also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire the nonbanking subsidiaries of National Commerce, including, among others, NBC FSB and First Market FSB.⁵⁶ In addition to operating savings associations, SunTrust would engage in a number of other nonbanking activities that are permissible for bank holding companies under Regulation Y, including real and personal property leasing, financial and investment advisory services, trust company activities, community development, and data

⁵⁵ One commenter alleged improprieties regarding his mortgage from Sun America Mortgage. SunTrust stated that no SunTrust entity is or was a party to this loan, and that the loan was sold before the SunTrust/Sun America transaction.

⁵⁶ See Appendix A.

processing.⁵⁷ SunTrust has committed that it will conduct these nonbanking activities in accordance with the Board's regulations and orders approving the activities for bank holding companies.

To approve this notice, the Board also must determine that the proposed acquisition of National Commerce's nonbanking subsidiaries by SunTrust "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."⁵⁸ As part of its evaluation of these factors, the Board has considered the financial condition and managerial resources of SunTrust, its subsidiaries, and the companies to be acquired, as well as the effect of the proposed transaction on those resources. For the reasons discussed above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval.

The Board also has reviewed the competitive effects of SunTrust's proposed acquisition of National Commerce's nonbanking depository subsidiaries. For the reasons stated earlier, and based on all the facts of record, consummation of this proposal would be consistent with Board precedent and DOJ Guidelines in the Richmond, Newport News-Hampton, and Fredericksburg banking markets where SunTrust Bank and First Market FSB compete directly.

In addition, SunTrust and National Commerce compete directly in trust company, data processing, investment advisory, and community development activities. The markets for each of these nonbanking activities are regional or national in scope, except the market for community development, which is local. The record in this case indicates that there are numerous providers of each of these services and that SunTrust and National Commerce's levels of participation are relatively small.

⁵⁷ 12 C.F.R. 225.28(b)(3), (4)(ii), (5), (6), (12), (14).

⁵⁸ 12 U.S.C. § 1843(j)(2)(A).

Based on all the facts of record, the Board concludes that consummation of the proposed nonbanking acquisitions is not likely to have any significantly adverse competitive effects.

The Board also has reviewed carefully the public benefits of the proposed acquisition of National Commerce's nonbank subsidiaries. SunTrust has indicated that the expanded geographic scope of SunTrust's nonbanking operations would provide added convenience to current and future customers of SunTrust and National Commerce, and that customers of both institutions would have access to a broader array of products and services.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public benefits factor that it must consider under section 4(j)(2) of the BHC Act is consistent with approval of SunTrust's notice.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the applications and notice should be, and hereby are, approved.⁵⁹ In reaching this conclusion, the Board has considered all the facts of

⁵⁹ A number of commenters requested that the Board deny the proposal, delay action on the proposal, or extend the comment period until SunTrust enters into various agreements proposed by the commenters. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and considerable public comment. The Board believes this record is

record in light of the factors it is required to consider under the BHC Act and other applicable statutes.⁶⁰ The Board's approval is specifically conditioned on compliance by SunTrust with the conditions in this order and with all the

sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting an extension of the comment period, or denying the proposal on the grounds discussed above is not warranted.

⁶⁰ Many commenters requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from any supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). In addition, the Board's rules provide for a hearing on a notice to acquire a nonbanking company if there are disputed issues of material facts that cannot be resolved in another manner. 12 C.F.R. 225.25(a)(2). The Board has considered carefully the commenters' requests in light of all the facts of record. As noted, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenters have submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why their written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. Their requests also fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing or meeting. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

commitments made to the Board in connection with this proposal, including the branch divestiture commitments discussed above, and receipt of all other regulatory approvals. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The bank acquisition shall not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors,⁶¹ effective September 14, 2004.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁶¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

APPENDIX A

Nonbanking Activities of National Commerce⁶²

- (1) Extending credit, servicing loans, and factoring, in accordance with section 225.28(b)(1) of Regulation Y (12 C.F.R. 225.28(b)(1)), through TransPlatinum Service Corp., Nashville (“TransPlatinum”);
- (2) Leasing personal and real property, in accordance with section 225.28(b)(3) of Regulation Y (12 C.F.R. 225.28(b)(3)), through USI Alliance Corp., Memphis (“USI”);
- (3) Operating savings associations, in accordance with section 225.28(b)(4)(ii) of Regulation Y (12 C.F.R. 225.28(b)(4)(ii)), through First Market FSB and NBC FSB;
- (4) Operating a nondepository trust company, in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5)), through First Mercantile Trust Company, Memphis (“Trust Company”);
- (5) Providing financial and investment advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)), through FMT Capital Management, Inc., Commerce Capital Management, Inc., both in Memphis, Trust Company, and Brooks, Montague & Associates, Inc., Chattanooga;
- (6) Engaging in community development activities, in accordance with section 225.28(b)(12) of Regulation Y (12 C.F.R. 225.28(b)(12)), through Senior Housing Crime Prevention Foundation Investment Corporation, Memphis, and USI; and
- (7) Providing data processing and data transmission services, in accordance with section 225.28(b)(14) of Regulation Y (12 C.F.R. 225.28(b)(14)), through TransPlatinum.

⁶² All the named subsidiaries are in Tennessee and include organizations controlled by them.

APPENDIX B

Banking Markets where SunTrust Bank and National Commerce's Subsidiary Depository Institutions Compete Directly

Georgia Banking Markets

Atlanta

Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties; the towns of Auburn and Winder in Barrow County; the town of Luthersville in Meriwether County; and Hall County, excluding the town of Clermont.

Dalton

Murray and Whitfield Counties.

Rome

Rome and Polk Counties.

Savannah

Bryan, Chatham, and Effingham Counties.

Tennessee Banking Markets

Chattanooga (Tennessee and Georgia)

The Chattanooga MSA, excluding the town of Monteagle in Marion County, Tennessee.

Cleveland

Bradley County and the towns of Benton and Ocoee in Polk County.

Knoxville

Anderson, Knox, Loudon, Roane, and Union Counties; the portion of Blount County northwest of Chilhowee Mountain; the towns of Harriman and Oliver Springs in Morgan County; the towns of Seymour and Kodak in Sevier County; and the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs in Grainger County.

Lawrence County

Lawrence County.

Morristown-Newport

Cocke and Hamblen Counties; the towns of Baneberry, Jefferson City, Jefferson Estates, Leadvale, Talbot, and White Pine in Jefferson County; and Grainger County, excluding the towns of Blaine, Buffalo Springs, Joppa, Lea Springs, and Powder Springs.

Nashville

Cheatham, Davidson, Robertson, Rutherford, Sumner, Williamson, and Wilson Counties.

Virginia Banking Markets

Fredericksburg

Caroline, King George, and Spotsylvania Counties; Stafford County, excluding the portion in the Washington, DC-MD-VA Rmally Metropolitan Area (“RMA”); the independent city of Fredericksburg; the town of Lake Anna in Louisa County; and the towns of Colonial Beach, Leedstown, Oak Grove, and Potomac Beach in Westmoreland County.

Newport News-Hampton

The Newport News-Hampton RMA; the non-RMA portions of James City and Matthews Counties; and the independent cities of Hampton, Newport News, Poquoson, and Williamsburg.

Pulaski-Radford

Montgomery and Pulaski Counties and the independent city of Radford.

Richmond

The Richmond RMA; the non-RMA portions of Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince George Counties; Charles City, King and Queen, King William, and New Kent Counties; and the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond.

Roanoke

The Roanoke RMA; the non-RMA portions of Botetourt and Roanoke Counties; the town of Boones Mill in Franklin County; and the independent cities of Roanoke and Salem.

APPENDIX C
Market Data for Banking Markets without Divestitures

Unconcentrated Banking Market

Morristown-Newport, Tennessee

SunTrust operates the fifth largest depository institution in the market, controlling deposits of \$142.7 million, which represent approximately 10.5 percent of market deposits. National Commerce operates the 11th largest depository institution in the market, controlling deposits of \$36.5 million, which represent approximately 2.7 percent of market deposits. After the proposed merger, SunTrust would operate the second largest depository institution in the market, controlling deposits of approximately \$179.2 million, which represent approximately 13.1 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase by 56 points to 984.

Moderately Concentrated Banking Markets

Georgia Banking Markets

Atlanta

SunTrust operates the second largest depository institution in the market, controlling deposits of \$13.8 billion, which represent approximately 19.1 percent of market deposits. National Commerce operates the 13th largest depository institution in the market, controlling deposits of \$549.4 million, which represent less than 1 percent of market deposits. After the proposed merger, SunTrust would remain the second largest depository institution in the market, controlling deposits of approximately \$14.4 billion, which represent approximately 19.9 percent of market deposits. Eighty-seven depository institutions would remain in the banking market. The HHI would increase by 29 points to 1317.

Dalton

SunTrust operates the 14th largest depository institution in the market, controlling deposits of \$4.4 million, which represent less than 1 percent of market deposits. National Commerce operates the 11th largest depository institution in the market, controlling deposits of \$22.1 million, which represent approximately 1.3 percent of market deposits. After the proposed merger, SunTrust would operate the tenth largest depository institution in the market, controlling deposits of approximately \$26.5 million, which represent approximately 1.6 percent of market deposits. Thirteen depository institutions would remain in the banking market. The HHI would increase by 1 point to 1390.

Rome

SunTrust operates the largest depository institution in the market, controlling deposits of \$289.2 million, which represent approximately 20.3 percent of market deposits. National Commerce operates the tenth largest depository institution in the market, controlling deposits of \$40.4 million, which represent approximately 2.8 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$329.6 million, which represent approximately 23.1 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase by 11 points to 1359.

Savannah

SunTrust operates the third largest depository institution in the market, controlling deposits of \$702.7 million, which represent approximately 19.3 percent of market deposits. National Commerce operates the sixth largest depository institution in the market, controlling deposits of \$137.2 million, which represent approximately 3.8 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of approximately \$839.9 million, which represent approximately 23.1 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase by 146 points to 1684.

Tennessee Banking Markets

Chattanooga (Tennessee and Georgia)

SunTrust operates the largest depository institution in the market, controlling deposits of \$1.2 billion, which represent approximately 21 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$141.7 million, which represent approximately 2.5 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$1.3 billion, which represent approximately 23.6 percent of market deposits. Twenty-three depository institutions would remain in the banking market. The HHI would increase by 106 points to 1448.

Cleveland

SunTrust operates the sixth largest depository institution with four branches in the market, controlling deposits of \$102.7 million, which represent approximately 8.9 percent of market deposits. National Commerce opened a de novo branch in the market on January 21, 2004. FDIC deposit data reflecting the deposits of National Commerce's branch are not yet available. After the proposed merger,

nine depository institutions would remain in the market. The Board has considered SunTrust's deposits in the market, the number of competing institutions and the deposits controlled by those institutions, and the recent entry of National Commerce's branch. The HHI would remain unchanged at 1579. Based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect in this banking market.

Knoxville

SunTrust operates the third largest depository institution in the market, controlling deposits of \$1.3 billion, which represent approximately 14.4 percent of market deposits. National Commerce operates the eighth largest depository institution in the market, controlling deposits of \$310.1 million, which represent approximately 3.4 percent of market deposits. After the proposed merger, SunTrust would operate the second largest depository institution in the market, controlling deposits of approximately \$1.6 billion, which represent approximately 17.8 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase by 92 points to 1215.

Nashville

SunTrust operates the third largest depository institution in the market, controlling deposits of \$3.3 billion, which represent approximately 16.9 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$619.4 million, which represent approximately 3.2 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of approximately \$3.9 billion, which represent approximately 20.1 percent of market deposits. Thirty-five depository institutions would remain in the banking market. The HHI would increase by 107 points to 1214.

Virginia Banking Markets

Fredericksburg

SunTrust operates the seventh largest depository institution in the market, controlling deposits of \$95.2 million, which represent approximately 4.5 percent of market deposits. National Commerce operates the ninth largest depository institution in the market, controlling deposits of \$38.3 million, which represent approximately 1.8 percent of market deposits. After the proposed merger, SunTrust would operate the sixth largest depository institution in the market, controlling deposits of approximately \$133.5 million, which represent approximately 6.3 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase by 16 points to 1793.

Newport News-Hampton

SunTrust operates the largest depository institution in the market, controlling deposits of \$847.9 million, which represent approximately 22.1 percent of market deposits. National Commerce operates the 13th largest depository institution in the market, controlling deposits of \$31.3 million, which represent less than 1 percent of market deposits. After the proposed merger, SunTrust would remain the largest depository institution in the market, controlling deposits of approximately \$879.2 million, which represent approximately 22.9 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase by 36 points to 1406.

Pulaski-Radford

SunTrust operates the seventh largest depository institution in the market, controlling deposits of \$98.3 million, which represent approximately 6.4 percent of market deposits. National Commerce operates the tenth largest depository institution in the market, controlling deposits of \$21.5 million, which represent approximately 1.4 percent of market deposits. After the proposed merger, SunTrust would operate the fourth largest depository institution in the market, controlling deposits of approximately \$119.7 million, which represent approximately 7.8 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase by 18 points to 1789.

Richmond

SunTrust operates the fifth largest depository institution in the market, controlling deposits of \$2.4 billion, which represent approximately 10.2 percent of market deposits. National Commerce operates the sixth largest depository institution in the market, controlling deposits of \$813.7 million, which represent approximately 3.5 percent of market deposits. After the proposed merger, SunTrust would operate the fourth largest depository institution in the market, controlling deposits of approximately \$3.2 billion, which represent approximately 13.7 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase by 71 points to 1619.

Roanoke

SunTrust operates the third largest depository institution in the market, controlling deposits of \$608.3 million, which represent approximately 13.6 percent of market deposits. National Commerce operates the fourth largest depository institution in the market, controlling deposits of \$445.2 million, which represent approximately 9.9 percent of market deposits. After the proposed merger, SunTrust would operate the largest depository institution in the market, controlling deposits of

approximately \$1 billion, which represent approximately 23.5 percent of market deposits. Fifteen depository institutions would remain in the banking market. The HHI would increase by 269 points to 1491.